

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PAUL RICHARDSON,) Case No. C 15-6000 PSG (PR)
Plaintiff,)
v.) **ORDER OF DISMISSAL**
BOARD OF PAROLE HEARINGS,)
Defendant.)

Paul Richardson, a California prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983.¹ For the reasons stated below, the court dismisses the complaint for failure to state a claim for relief.

I. DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.² In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous,

¹ Richardson has consented to magistrate judge jurisdiction. *See* Docket No. 4.

² *See* 28 U.S.C. § 1915A(a).

1 malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a
 2 defendant who is immune from such relief.³ *Pro se* pleadings must, however, be liberally
 3 construed.⁴

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
 5 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
 6 the alleged deprivation was committed by a person acting under the color of state law.⁵

7 B. Richardson's Claim

8 On November 14, 2014, a three-judge court in *Coleman v. Brown*, No. 90-cv-520-KJM
 9 DAD (PC) (E.D. Cal.), and *Plata v. Brown*, No. C01-1351 TEH (N.D. Cal.), issued an order
 10 directing the State to "implement new parole procedures for non-violent second-strikers by
 11 January 1, 2015," by creating "a new parole determination process through which non-violent
 12 second-strikers will be eligible for parole consideration by the Board of Parole Hearings once
 13 they have served 50% of their sentence."⁶ As a non-violent second striker who had served at
 14 least 50% of his sentence, Richardson was eligible for parole consideration under this
 15 *Coleman/Plata* order. On September 10, 2015, the Board of Parole Hearings considered and
 16 denied Richardson parole.⁷

17 Richardson's federal complaint asks this court to compel the Board of Parole Hearings to
 18 reassess its denial of Richardson's eligibility for parole, and grant him early release.⁸ However,
 19 Richardson's complaint fails to state a cognizable claim for relief. First, Richardson does not
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 22 ³ See 28 U.S.C. § 1915A(b)(1), (2).

23 ⁴ See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

24 ⁵ See *West v. Atkins*, 487 U.S. 42, 48 (1988).

25 ⁶ *Plata v. Brown*, No. C01-1351 TEH (N.D. Cal.), Docket No. 2823 at 2.

26 ⁷ See Docket No. 1 at 2; Docket No. 1-1 at 2, 4; Docket No. 1-2 at 2.

27 ⁸ See Docket No. 1-2 at 18.

1 assert that the denial of parole violated any constitutional right.⁹ Second, because Richardson is
2 seeking immediate release, rather than an earlier eligibility review or parole hearing,
3 Richardson's claim must be brought in habeas rather than in civil rights.¹⁰ "[H]abeas corpus is
4 the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement
5 and seeks immediate or speedier release, even though such a claim may come within the literal
6 terms of § 1983."¹¹

7 **II. CONCLUSION**

8 This action is DISMISSED for failure to state a claim.

9 IT IS SO ORDERED.

10 DATED: 3/16/2016


PAUL S. GREWAL
United States Magistrate Judge

25 ⁹ See *West*, 487 U.S. at 48.

26 ¹⁰ See *Anyanwutaku v. Moore*, 151 F.3d 1053, 1055-56 (D.C. Cir. 1998).

27 ¹¹ *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 489
28 (1973)); see *Skinner v. Switzer*, 131 S. Ct. 1289, 1293 (2011).

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